

### **REMARKS**

This Application has been carefully reviewed in light of the Final Office Action dated January 28, 2008 ("Office Action"). At the time of the Office Action, Claims 1-52 were pending in the Application. In the Office Action, the Examiner rejects Claims 1-52. To advance prosecution of the present case, Applicants amend Claims 1, 9, 10, 14, 17, 22, 23, and 27. Applicants do not admit that any amendments are due to any prior art or any of the Examiner's rejections. Applicants traverse the rejections and request reconsideration and favorable action in this case.

#### **Section 102 Rejections**

Claims 1-4, 6-13, 15-17, and 19-26 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 7,172,508 B2 issued to Simon et al. ("*Simon*"). Applicants traverse this rejection and respectfully request reconsideration and allowance of these claims.

*Simon* fails to teach, suggest, or disclose each element of amended Claim 1. For example, *Simon* fails to teach, suggest, or disclose that "for each of the plurality of events, a plurality of units are allocated among participants according to a respective finishing position of each participant" as recited in amended Claim 1. *Simon* generally discloses a hierarchical betting system that allows betting on a sporting event. *Simon*; abstract. The Office Action cites a portion of *Simon* that describes betting on a horse race. Office Action; p. 3. The cited portion of *Simon* states:

Typically, all betting on horse races is done prior to the beginning of the race....Betting events 18 may include: (1) win; (2) place; (3) show. The betting choices 80 for each event 18 is the list of horses (i.e. participants) in the race. For each event 18 the first line 20 opens 22 before the race and closes 24 when the race begins. This could be called the "conventional" line. After the race begins, however, new lines 20 can open 22 as the race proceeds, for e.g. every 15 seconds until the end of the race....The foregoing principles can be applied to other racing events, such as human track and road running events, automobile races, and dog races.

Col. 18; ll. 5-27. Thus, the system in *Simon* allows a bettor to select a horse from a "list of horses." *Id.* The bettor may wager on whether the selected horse will finish in first place (i.e., "win"), in second place (i.e., "place"), or in third place (i.e., "show"). *Id.* This type of conventional racing bet does not teach, suggest, or disclose allocating "a plurality of

units...among participants” as recited in amended Claim 1. Furthermore, the racing bet in *Simon* is a bet on a single race. Thus, *Simon* fails to teach, suggest, or disclose “a bet that the total number of units earned by a particular participant over a course of a plurality of events will fall within a first range of numbers, wherein...for each of the plurality of events, a plurality of units are allocated among participants according to a respective finishing position of each participant” as recited in amended Claim 1. (Emphasis added). The Office Action cites another portion of *Simon* that describes betting on “longer term events.” *Simon*; col. 10, ll. 7-8. *Simon* states that a pari-mutuel betting game “can be applied to...the standings in a sports league, the outcome of a tournament, or the outcome of a multi-game series (e.g., the seven game World Series in baseball).” Col. 10, ll. 7-11. Thus, the system in *Simon* allows a bettor to bet on which team will win a tournament or series. Merely wagering on which team will win a tournament or series, however, does not teach, suggest, or disclose that “for each of the plurality of events, a plurality of units are allocated among participants according to a respective finishing position of each participant” as recited in amended Claim 1. (Emphasis added). Applicants respectfully remind the Examiner that, a claim is anticipated under Section 102 “only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). In addition, “The identical invention must be shown in as complete detail as is contained in the ... claim,” and “[t]he elements must be arranged as required by the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); M.P.E.P. § 2131 (emphasis added). Thus, the bet on a tournament or series in *Simon* fails to teach, suggest, or disclose that “for each of the plurality of events, a plurality of units are allocated among participants according to a respective finishing position of each participant” as recited in amended Claim 1.

The Office Action cites yet another portion of *Simon* that discloses betting on a football or baseball game. Office Action; p. 8. In particular, the cited portion of *Simon* discloses a bet on the outcome of a field goal kick and a bet on “how many touchdowns will be scored in the quarter.” Col. 16; ll. 25-44. These bets, however, have nothing to do with “a respective finishing position of each participant” as recited in amended Claim 1. In addition, these bets do not teach, suggest, or disclose that “for each of the plurality of events, a

plurality of units are allocated among participants according to a respective finishing position of each participant” as recited in amended Claim 1. Because *Simon* fails to teach, suggest, or disclose this aspect of amended Claim 1, the rejection should be withdrawn. For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of amended Claim 1.

In rejecting Claim 17, the Office Action employs the same rationale used to reject Claim 1. Accordingly, for reasons analogous to those stated above with respect to amended Claim 1, Applicants respectfully request reconsideration and allowance of amended Claim 17.

Claims 2-4, 6-13, 15-16, and 19-26 depend from independent claims shown above to be allowable. In addition, these claims recite further elements that are not taught, suggested, or disclosed by the cited references. For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 2-4, 6-13, 15-16, and 19-26.

### **Section 103 Rejections**

Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Simon*. Claims 5, 18, 28-34, 37-45 and 48-52 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Simon* in view of U.S. Patent No. 6,126,543 issued to Friedman (“*Friedman*”). Applicants traverse these rejections and respectfully request reconsideration and allowance of these claims.

The *Simon-Friedman* combination fails to teach, suggest, or disclose each element of Claim 28. For example, the cited references fail to teach, suggest, or disclose “receiving one or more participant bets, each participant bet...comprising a bet that the number of units earned by that participant over the course of the plurality of events will exceed a particular index number before the number of units earned by any other of the plurality of participants exceeds the particular index number” as recited in Claim 28. The Office Action relies on *Friedman* for the “index number” recited in Claim 28. (Office Action; page 6). The cited portion of *Friedman* generally describes an over/under bet. (Col. 1, l. 66 – Col. 2, l. 6). Specifically, *Friedman* states:

Another type of straight bet is an over/under bet representing the total amount of points the two teams will score in the game. A bettor can bet that the teams will exceed or go over the over/under bet or go under the bet. Ties are usually considered pushes, with money returned. Over/under bets may be combined with money lines.

(Col. 1, l. 66 – Col. 2, l. 6). Thus, the Examiner seems to equate the “total amount of points” for the over/under bet in *Friedman* with the “particular index number” recited in Claim 28. A mere over/under bet on the “total amount of points” that two teams score in a game, however, does not teach, suggest, or disclose “a bet that the number of units earned by that participant over the course of the plurality of events will exceed a particular index number before the number of units earned by any other of the plurality of participants exceeds the particular index number” as recited in Claim 28. (Emphasis added).

In the Office Action, the Examiner seems to acknowledge that *Friedman* fails to teach, suggest, or disclose “before the number of units earned by any other of the plurality of participants exceeds the particular index number” as recited in Claim 28. To overcome this deficiency of *Friedman*, the Examiner states that “Simon discloses placing different types of bets on a plurality of events.” Office Action; p. 9. Even if one assumes this statement is correct, such a teaching does not overcome the deficiency of *Friedman*. Merely offering “different types of bets” does not teach, suggest, or disclose modifying the over/under bet of *Friedman* to be “a bet that the number of units earned by that participant over the course of the plurality of events will exceed a particular index number before the number of units earned by any other of the plurality of participants exceeds the particular index number” as recited in Claim 28. (Emphasis added). Because the *Simon-Friedman* combination fails to teach, suggest, or disclose this aspect of Claim 28, the rejection is improper. For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of Claim 28.

In rejecting Claim 42, the Examiner employs the same rationale used to reject Claim 28. Accordingly, for reasons analogous to those stated above with respect to Claim 28, Applicants respectfully request reconsideration and allowance of Claim 42.

Claims 5, 14, 18, 29-34, 37-41, 43-45, and 48-52 depend from independent claims shown above to be allowable. In addition, these claims recite further elements that are not taught, suggested, or disclosed by the cited references. For at least these reasons, Applicants

respectfully request reconsideration and allowance of Claims 5, 14, 18, 29-34, 37-41, 43-45, and 48-52.

**Conclusions**

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending Claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

No fees are believed to be due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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